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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,503	10/22/2001	Eric Terranova	05725.0944	4279

7590

03/03/2003

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 03/03/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,503

Applicant(s)

TERRANOVA ET AL.

Examiner

Eisa B Elhilo

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1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-25, 28, 29, 32-37 and 40-55 is/are rejected.
- 7) ☒ Claim(s) 26, 27, 30, 31, 38 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

- 1 This action is responsive to the amendment filed on October 7, 2002.
- 2 Objection to claims 23, 31, 35, 52 and 55 is withdrawn, because of the applicant's amendment.
- 3 Claims 23-55 are pending in this application.

NEW GROUND OF REJECTION

Claim Rejections - 35 USC § 103

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-25, 28-29, 32-37, 40-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terranova et al. (WO 97/49378).

Terranova (WO' 378) teaches an oxidation dyeing composition for keratinous fibers and in particular human hair. The composition comprises in a medium which is suitable for dyeing, at least one first oxidation base of pyrazolo (1,5-a) pyrimidine derivative of the formula (1) which is similar to the claimed formula (I), when in the reference's formula (I), R₁, R₂, R₃ and R₄, which may be identical or different denote a hydrogen atom, X, which may be identical or different denotes di[(C₁-C₄)alkyl] amino(C₁-C₄) alkyl radical (it being possible for the dialkyls to form a 5- or 6-membered heterocyclic ring), i = 1, p is equal to 0 or 1, q is equal to 0 or 1, n is equal to 0 or 1 with all the proviso limitations (see page 3, lines 1-27), and when in the claimed formula (1), A is amino radical, R₁ and R₂ are hydrogen atoms, R₃ is a Z group of the claimed

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formulae (II), (III) or (IV). The dyeing composition also comprises from 0.0005 to 12% and more preferably from 0.005 to 6% by weight of first oxidation bases such as pyrazolo[1,5-a]pyrimidine derivative of the formula (I) (see page 8, lines 13-16), from about 0.0001 to 10% and more preferably from 0.005 to 5% by weight of at least one coupler chosen from 3-aminophenol and meta-phenylenediamines (see page 11, lines 23-30 and page 12, lines 1-3), from about 0.0005 to 12% and more preferably from 0.005 to 6% by weight of second oxidation base chosen from hetrocyclic bases such as pyrimidine derivatives (see page 11, lines 7-10), acid addition salts chosen from acetates and hydrochlorides (see page 5, lines 1-5). Terranova also teaches a process for oxidation dyeing keratin fibers. The process comprises the step of applying a dyeing composition as defined above is applied to the hair, the color being developed at acidic, neutral or alkaline pH using hydrogen peroxide (see page, 13, lines 28-31) as an oxidizing agent which is added only at the time of use to the dyeing composition or which is present in an oxidizing composition that is applied simultaneously or sequentially in a separate manner (see page 12, lines 28-31 and page 13, lines 1-6). Terranova further, teaches a multi-compartment dyeing device or kit comprising at least two compartments, the first compartment contains the dyeing composition as defined above and a second compartment of which contains the oxidizing composition as defined above as claimed in claim 15 (see page 14, lines 21-28).

The instant claims differ from the reference by reciting a dyeing composition comprising a pyrazolo[1,5-a]pyrimidine derivative of the claimed formula (I), in which one of the R₁, R₂ or R₃ represents a saturated cationic groups of the claimed formula (IV) (quaternary ammonium salts. However, the reference teaches a dyeing composition comprising oxidation base

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represented by the formula (I), in which X denotes di[(C₁-C₄)alkyl] amino(C₁-C₄) alkyl radical (tertiary amine) (see page 4, lines 1-2).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a dyeing composition because the reference teaches tertiary amine compounds while the claim recites a quaternary amine compounds and both compounds are analogs amino compounds that would be expected to have similar properties in the absence of contrary. Further, it is well settled that a primary amine is found unpatentable over secondary amine because a chemist is readily aware of the difference between primary, secondary and tertiary amines, including their reactivities, particularly with respect to the possibility of further substitution for the hydrogen in the primary amines (see *In re. Hoeksema* 154USPQ 169; *Exparte Weston & Hamler* 121USPQ 428 and *Exparte Bluestone* 135USPQ 199). Thus, a person of the ordinary skill in the art has a reasonable expectation of success.

Allowable Subject Matter

Claims 26-27, 30-31 and 38-39 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record does not teach or disclose a hair dyeing composition comprising oxidation bases of the claimed formula (I), in which R₁, R₂ or R₃ represents a Z group of the claimed formula (II) or (III).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

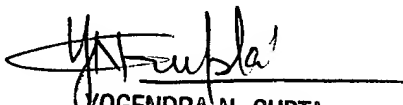
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo

February 20, 2003



YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
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